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Metropolitan Sewers.

OPINION OF COUNSEL AS TO RATES.

February, 1849.

QUESTIONS PUT TO MR HENDERSON.

1st. You will be pleased to advise as to the best mode of obviating the difficulty as to the circumstances of the Poplar district ; and

2nd. Whether the Commissioners may practically levy rates in gross, or whether they can be consolidated with the Poor rate.

3rd. Whether rates must be made annually or only for one year.

4th. And whether the Commissioners could borrow and charge the rates with principal and interest, or either, beyond the shilling in the pound as for rates.

OPINION.

1st. The debt of the Poplar district, if, or so far as due under the old Commission, is recoverable from the new Commissioners, and may either be provided for by a prospective rate, or paid at once out of any monies received under the Act replacing the money out of a retrospective rate, made within one year after the payment. If, or so far as the debt was incurred under the operation of the new act, it falls into the class of expenses incurred by the Commissioners to be provided for out of a retrospective rate made within a year after the expense was incurred.

The 77th section, in giving power to make a rate prospectively or retrospectively does *not*, I think, authorise one rate for both purposes ; "or" cannot, for the purpose, be construed as, "and;" each rate must be made, not only "for or in respect of a specified period, not exceeding one year," but also to raise money to pay *either* future or already incurred expenses. What prospective expenses shall be ascribed to the period, for or in respect of which a prospective rate is made, is left to the discretion of the Commissioners, but the intention of the legislature seems to be, that as nearly as possible, such rate should be made with reference to the amount of expense to be incurred during the period for, or in respect of which such rate is made. The only mode consistent with that intention which I can suggest of avoiding the inconvenience of levying *annually* in such a district as Poplar, is to make, when needed, *two* rates, each for a year, the one for future expenses, the other for expenses incurred *within a year*, before the making of such rate, the two rates being made so nearly at the same time that they may be collected together. Thus the rates, though annual in form and effect, might be biennial in collection.

2nd. Observing the provisions touching the making of all rates, and expressing in their precepts or warrant the exemptions, reductions, and allowances, which

Secs. 76, 77, 102.

must be observed, whatever be the form of the rate, I think that the Commissioners may make, and render legally obligatory a rate in gross. The officers to whom the precept or warrant is directed must and easily may observe the exemptions, etc., specified therein; and as they are bound to give to each person a receipt or certificate showing the amount paid by him in respect of the rate, questions of deduction, etc., between him and his landlord would be adjustable according to the Act. The officers guided by the poor rate assessment as to value, and by the rate in gross as to the amount in the pound in value, could individualise the assessment. Still I concur with Mr Gael (with whom I have had the advantage of a consultation on this subject), in thinking that great practical difficulties might attend the working out of the precept or warrant. Against the rate in gross the officers of the parish or place may appeal to the Commissioners, but *individual* appeal to them is confined to cases of rates not in gross. For the individual aggrieved under a rate in gross no remedy is provided, nor is any course of procedure defined to enable the officer to enforce payment. The jurisdiction of the Commissioners as to individual assessment ceases with the rate in gross, and hence, questions might arise on the claim as to rating tenements under the annual value of 10*l.* Inconveniencies may be occasioned by the resignation to parochial officers of the administrative, so far as relates to collecting rates of sewers law and usages.

ec. 104

ecs. 94, 95.

ec. 85.

The advantages attending a system of rating in gross are probably too great to be relinquished on account of occasional inconvenience. But the difficulties which the local authorities might have to encounter are such, that until the experiment has been successfully tried, I could not advise the Commissioners to *force* a rate in gross on a parish or place of which the authorities are unwilling.

In consolidation there would not be either the same difficulties or the same advantages. It would, in effect, render the collectors of the poor's rates collectors for the commissioners of the sewers' rates, and whether any expense in collection would be thus saved I know not.

cs. 76, 77.

3rd. The rates are to be made "from time to time as occasion shall require," and the Commissioners are the judges of the occasion. It is not obligatory to make them annually or for one year.

They must be made when the Commissioners find occasion, each being made for in respect of a period not exceeding a year, either retrospectively or prospectively, and so that one shilling in the pound of value for each year be not exceeded.

4th. The amount to be borrowed is left to the discretion of the Commissioners, but practically the amount of loan to be charged on rates is limited to the amount which may be raised by rates; that is, an amount not exceeding what one shilling in the pound of rateable value per annum would produce.

J. HENDERSON.

TEMPLE, 13*th February*, 1849.

OPINION OF MR GAEL.

I think the objections to the rate in gross are insurmountable. By the 76th clause of the act it will be seen that all the then existing exemptions and reductions and allowances are preserved.

On reference to the repealed acts it will be seen that there is a variety of such exemptions, &c., mentioned, besides what the practice of the different commissions may have introduced, or the old law sanctioned.

All the particulars of these exemptions, reductions, and allowances, the Commissioners are bound to specify in their precept to the guardians. This would oblige the Commissioners to go through the parochial assessment books and all their entries *seriatim*, and probably to furnish particulars of matters not contained even in these books.

A party entitled to an exemption could not be deprived of it by the omission of the Comissioners to specify it in their precept as to such a party, the precept is therefore void; and as there appears to be no means of distinguishing the good from the bad, the precept I apprehend would be void altogether by reason of such an omission. There is nothing by which the precept can be corrected or divided. In this view of the case, it seems impossible to make a valid precept. There is no appeal given to parties individually aggrieved. The appeal is given to overseers; and therefore a party would, if the precept were deemed valid, lose the right which the law has carefully preserved: his remedy is to treat the precept as a nullity.

Even assuming that a valid precept could be issued, I apprehend that great difficulty would be experienced in raising and recovering money under it. The precept would issue to the guardians of a union (taking the case of a parish in union) requiring the guardians to pay the rated sum out of monies of the parish held or to be received by the guardians on behalf of that parish, and as the parties rateable to the poor rate and the sewer rate would not be the same, it is probable that the guardians would say that the rates should be collected before the sum mentioned in the precept would be paid, which would delay the payment to an inconvenient period, and one depending upon the discretion of others; but granting that the precept be complied with, and the gross sum therein specified paid, there seems great hardship in imposing on the guardians and their collectors the task of levying the amount on the right parties; *i.e.*, in observing all the discrepancies between the sewer rate and the poor rate. No adequate powers for the partition of the parochial contribution among the ratepayers are given by the act. The case of the King *v.* Whittaker and others, 9 B and C, p. 648, shows the nature of the provision which ought to have been made for the purpose of apportionment. There is no way of bringing the sum paid on the precept, and the sum raised by the actual collection of the rate, to a balance, if they should not agree. With regard to the consolidation and the collection the difficulties may not be insuperable; but the advantages in point of economy do not appear to be considerable, and I think there would be found great incongruity in the justices of the peace enforcing the rates and applying the law of sewers.

SAMUEL H. GAEL.

10*th February*, 1849.

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OPINION OF COUNSEL

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RATES.

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